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SUPREME COURT, U.S.

No. 99-538

IN THE

Supreme Court of the United States

ELMER F. BOCK, Administrator of the
Estate of Phyllis Bock, Deceased,

Petitioner,

v.

ST. LOUIS SOUTHWESTERN RAILWAY CO.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDINGS

All the parties to the proceedings are listed in the caption.

St. Louis Southwestern Railway Company is a wholly-owned subsidiary of Union Pacific Corporation, a publicly-held corporation.

STATEMENT OF THE CASE

The petitioner seeks this Court's review of the circumstances in which federal funding for railroad crossing warning devices preempts state common-law claims alleging the inadequacy of those devices. This Court recently granted a petition for *certiorari* for this same issue in *Norfolk Southern Railway Co. v. Shanklin* (filed Aug. 20, 1999, and brief in opposition filed September 17, 1999). In this case, the Eighth Circuit applied the established law of the circuit in relation to federal preemption of inadequate warning device claims, finding that "once a federally funded warning device is installed and operational . . . preemption occurs." Pet. App. 4-5. Thus, petitioner's state-law claims were preempted based on the clear record in the case. In *Shanklin*, however, the Sixth Circuit held that preemption applies only if the federal government both funds the warning devices and makes an actual determination that the devices at the specific crossing are adequate. (Pet. for Cert., *Shanklin* 13a). Since this Court's decision in *Shanklin* should resolve the issues in this case, the Court should stay the present matter until after *Shanklin* is decided.

THIS CASE SHOULD BE HELD IN ABEYANCE UNTIL AFTER THIS COURT'S DECISION IN *SHANKLIN*

There is no dispute that Petitioner's claims would not have been preempted if the Sixth Circuit's holding in *Shanklin* applied in this case. It is also clear that if this Court finds that federal funding is sufficient to preempt common-law claims, and reverses *Shanklin*, the Eighth Circuit's ruling in the present case is correct and should stand. Also, if this Court affirms *Shanklin* by finding that preemption requires

more than federal funding of warning devices at a crossing, then the present case should be reversed. Accordingly, since this Court's decision in *Shanklin* should resolve the issues in the present matter, the Court should stay this matter until after its decision in *Shanklin*.

Holding this case in abeyance until after the Court decides *Shanklin* will promote judicial economy by saving time, effort, and resources for the parties involved and the Court. After *Shanklin* is decided, the Court can determine whether *certiorari* is appropriate in this case based on its preemption ruling. If necessary, the parties can file additional pleadings addressing the effect the ruling in *Shanklin* has on this case after that case is decided. This procedure should reduce the amount of material the Court will have to review to decide the preemption issue and assist in a timely resolution for all parties.

CONCLUSION

For the foregoing reasons, this Court should stay this matter until after *Shanklin* is decided.

Respectfully submitted,

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